




PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 03-4041	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/804,192	Filed March 19, 2004	
	First Named Inventor Brig Barnum ELLIOTT		
	Art Unit 2437	Examiner Fields, Courtney D.	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 46,340</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
		<p> Signature</p> <p>Philip J. Hoffmann Typed or printed name</p> <p>202-408-4000 Telephone number</p> <p>February 17, 2009 Date</p>	

<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



PATENT
Customer No. 25,537
Attorney Docket No. 03-4041

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Brig Barnum ELLIOTT)	Group Art Unit: 2437
)	
Application No.: 10/804,192)	Examiner: Fields, Courtney D.
)	
Filed: March 19, 2004)	
)	Confirmation No.: 6754
For: SYSTEMS AND METHODS FOR)	
IMPROVED MEDIA ACCESS)	
CONTROL)	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests a pre-appeal brief review of the Final Office Action mailed September 15, 2008, the period for response to which having been extended through February 17, 2009 (February 15th being a Sunday and February 16th being a Federal Holiday), by a Petition for Extension of Time of two months and fee payment filed concurrently herewith. This Request is being filed concurrently with a Notice of Appeal.

I. Requirements for Submitting a Pre-Appeal Brief Request for Review

Applicant has met each of the requirements for a pre-appeal brief review of the rejections set forth in the Final Office Action mailed September 15, 2008. The application has been at least twice rejected. Applicant has filed a Notice of Appeal with this Request, and has not yet filed an Appeal Brief. Lastly, Applicant submits a Pre-Appeal Brief Request for Review that is five (5) or less pages in length and sets forth legal or factual deficiencies in the rejections. *See Official Gazette Notice, July 12, 2005.* Therefore, Applicant requests review of the Examiner's rejections in the Final Office Action for the following reasons.

REMARKS

Claims 1-25 are pending. In the Advisory Action mailed January 14, 2009, the Examiner maintained the rejection of each of the claims under 35 U.S.C. § 102(e).

II. Rejection of Claims 1-25 under 35 U.S.C. § 102(e) as being anticipated by *Zweig*

Applicant respectfully traverses the rejection of claims 1-25 under 35 U.S.C. § 102(e) as being anticipated by *Zweig*. In order to properly establish that *Zweig* anticipates Applicant's claimed invention under 35 U.S.C. § 102, each and every feature of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Claim 1 recites a method comprising, for example:

receiving a **first message** including a first integer;
sending a **second message** including a second integer, the second message sent in response to the first message;
receiving, **in response to the second message**, a **third message** including data and a **third integer**, the **third integer serving to authenticate the third message**; and
sending, in response to the third message, a **fourth message** including a fourth integer, the fourth message serving to acknowledge receipt of the third message.

(Emphasis added). *Zweig* does not disclose or even suggest at least the above features of Applicant's claimed invention.

Logic 202 of *Zweig* uses addresses of work units 108 a-c to determine whether information is being sent from an authenticated wireless unit. (Figure 1, col. 6, line 62-col. 7, line 4). Such a disclosure, however, does not constitute "receiving, **in response to [a] second message, a third message** including data and a third integer, the third integer serving to **authenticate the third message**," (emphasis added) as recited in claim 1. Even assuming that the included address in *Zweig* could constitute the claimed "integer" and the authentication of a wireless unit could constitute "authentica[tion] [of] the third message," neither of which Applicant concedes, *Zweig* does not disclose that neither the received information is a "**third message**," the included address is a "**third integer**," nor "the **third integer serves to authenticate the third message**," as recited in claim 1. *Zweig* is silent with respect to the received information being "a third message including data and a third integer," as recited in claim 1.

Page 2 of the Final Office Action and Advisory Action cites from col. 7, line 58 to col. 8, line 4 of *Zweig* as allegedly disclosing the above-noted elements of claim 1, stating that:

Zweig et al. discloses authenticated and associated wireless units (third and fourth integers) are accepted to receive information from the wireless transceiver because the packets that contain the messages are associated with an access point. If the integers were non-authenticated wireless units, the packets containing the messages will not be forwarded to the wired backbone network.

This, however, is not correct. The cited portion of *Zweig* discloses reducing RF interference in a wireless environment by adjusting a fragmentation threshold based on a transmission error factor. Neither the cited portion, nor any other portion, of *Zweig* discloses “receiving, **in response to [a] second message**, a third message including data and a third integer, the third integer serving to **authenticate the third message**,” (emphasis added) as recited in claim 1.

Moreover, as was discussed on pages 12-13 of Applicant’s Amendment, filed on July 1, 2008, and pages 4-5 of Applicant’s Request for Reconsideration After Final, filed on December 28, 2008, claim 1 discloses a method of medium access control where a sequence is disclosed such that messages are exchanged in relation to other messages. Specifically, claim 1 recites “a **first** message,” “a **second** message,” “a **third** message,” and “a **fourth** message,” such that the second message is sent “in response to the **first** message,” the third message is received “in response to the **second** message,” and the fourth message is sent “in response to the **third** message,” (emphasis added). Further, the first to fourth messages of claim 1 include “a first integer,” “a second integer,” “a third integer,” and “a fourth integer,” respectively. As noted previously, *Zweig* simply does not disclose an exchange of messages in the sequence as recited in claim 1.

The Final Office Action has not addressed Applicant’s remarks, in the Amendment, that the April 1, 2008 Office Action has not linked the second message with the third message as recited in claim 1. The Advisory Action also has not addressed Applicant’s remarks in both the Amendment and the Request for Reconsideration After Final regarding linking of the messages.

The Final Office Action relies on col. 13, lines 12-20 of *Zweig* as allegedly corresponding to the claimed “first message” and “second message,” the Final Office Action further cites col. 6, lines 62-67 as allegedly corresponding to the claimed “third message,” and cites col. 8, lines 29-36 as allegedly corresponding to the “fourth message” without linking the second message with the third message or the third message to the fourth message as recited in claim 1. Final Office, page 4.

Therefore, *Zweig* does not teach or suggest the method of claim 1 including the features discussed above.

Accordingly, *Zweig* cannot anticipate claim 1. Thus, claim 1 is allowable for at least this reason. Claims 2-12 are also allowable at least due to their dependence from claim 1.

Independent claims 15, 16, and 24, while of different scope, recite features similar to those of claim 1 and are thus allowable over *Zweig* for at least reasons similar to those discussed above in regard to claim 1. Claims 17-22 are also allowable at least due to their dependence from claim 16.

Regarding independent claims 13, 14, 23, and 25, the Examiner cites to column 13, lines 5-23 of *Zweig* for allegedly teaching “receiving, in response to the clear to send message, a data message **including the second integer**, the second integer serving to **authenticate the data message**,” as recited in these independent claims. Final Office Action, page 3 and Advisory Action, page 2. This, however, is not correct. *Zweig* discloses that “[i]f the logic circuit 604 receives the CTS packet from the associated AP within the pre-determined time interval, then the logic circuit 604 transmits the corresponding data packet during the reserved time slot following the receipt of the CTS packet,” (column 13, lines 16-20). Such a disclosure does not constitute “the **second integer serving to authenticate the data message**,” as recited in claims 13, 14, 23, and 25. Neither the cited portion of *Zweig* nor any other portion of *Zweig* discloses or even suggests “receiving, in response to the clear to send message, a data message **including the second integer**, the second integer serving to **authenticate the data message**,” (emphasis added) as recited in claims 13, 14, 23, and 25.

Moreover, *Zweig* does not teach or suggest the sequence of messages disclosed in claims 13, 14, 23, and 25, where the claimed clear to send message is sent “in response to the received request to send message,” the claimed data message including the second integer is received “in response to the clear to send message,” and the claimed acknowledgment message is sent “in response to the received data message.” Therefore, *Zweig* cannot anticipate claims 13, 14, 23, and 25, and the claims are allowable.

Accordingly, for at least the above-noted reasons, withdrawal of the 35 U.S.C. § 102(e) rejection is respectfully requested.

III. The Finality of the Office Action is Improper

The finality of the Office Action is improper because, as noted above, the Examiner did not address Applicant’s reasoning included on pages 12 and 13 of the Amendment (“Reply”) filed July 1, 2008. Applicant had asserted that *Zweig* does not teach or suggest “a first message,” “a second

message,” “receiving, in response to the second message, a third message,” and then authenticating the “third message,” as recited in claim 1, because the Examiner had allegedly cited col. 13, lines 12-20 and col. 6, lines 62-67 of *Zweig* without linking the second message with the third message as recited in claim 1. See Amendment, pages 12 and 13.

The M.P.E.P. § 707.07(f) states that “[w]here the Applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the Applicant's argument and **answer the substance of it.**” (Emphasis added). The “Response to Arguments” section of the Final Office Action does not mention Applicant's reasoning. See Final Office Action, page 2. Similarly, page 4 of the Final Office Action also, does not address the substance of Applicant's traversal of the 35 U.S.C. § 102(e) rejection. Therefore, the Examiner has not answered the substance of Applicant's remarks as to why the Examiner considers claim 1 to be anticipated by *Zweig*. The Examiner has issued a Final Office Action without answering the substance of Applicant's arguments, as is required by the M.P.E.P. Thus, the Final Office Action fails to comply with M.P.E.P. § 707.07(f).

Accordingly, the finality of the Office Action is improper and Applicant respectfully requests the Examiner to withdraw the finality of the Office Action.

CONCLUSION

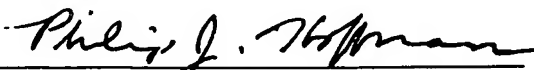
In view of the foregoing, Applicant respectfully requests that the rejections be withdrawn and the claims allowed.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 17, 2009

By: 
Philip J. Hoffmann
Reg. No. 46,340

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
(202) 408-4000